

## Documents and their position in the statutory provisions and judicial procedure

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### ABSTRACT

*Nowadays, one of the problems and issues constantly encountered by the society members and judicial courts is the discussion about the role of documents and deeds' registration in the purchase of the immovable properties. The present article aims at the investigation of the documents and their position in the statutory provisions and judicial procedure. According to the law, document includes a piece of writing usable by both the claimant and his or her opposite party, i.e. defendant, in the trials. The documents arranged by the officials within the limits of the legal regulations are credible unless otherwise is proved. One of the other outcomes of the registration of the documents is that their contents are indispensable without any need for courts' writs and the other governmental branches and all of the justice department's executive officers are obliged to enforce them when they are referred to by the law enforcers and even claims like the documents' fakeness cannot bar their enforcement unless the prosecutor has issued a writ indicating the culprit's conviction for the documents' forgery and the attorney has agreed thereto. The ordinary documents become as credible as the formal documents in two states and they become credible in the relationships between the parties, their inheritors and their deputies (according to article 1291 of the civil law). However, the dates of such types of document are never as credible as those of the formal deeds and they cannot be substantiated against the third persons.*

*Keywords: documents, statutory provisions, judicial procedure*

### Introduction

Nowadays, one of the problems and issues continuously encountered by many of the society members and the judicial courts is the discussion about the role of document registration in the selling of the immovable properties. The experiences gained in the past history of the landed properties' claims following the enactment and approval of the registration regulations, especially in the recent three decades, indicated that the existent registration regulations and the judicial procedure governing the properties' claims cannot solve and reduce the problems of the properties' claims and the contradictory transactions.

In our country, following the enactment of the registration regulations, especially in the past three decades, and after the registration of the landed properties' transaction documents became compulsory as ruled in the articles 46 and 47 of the registration law and according to the emphasis made by the legislator in article 22 of registration law that the government only realizes as the owner the person to whose name a document is registered or the person to whom an ownership deed has been formally transferred in such a way that this conveyances has to have been registered in the notary public offices or the person who has inherited a landed property, different perspectives came about regarding the role of the document registration for the landed properties' transactions; some realized formal deeds' arrangement and some

others realized the transactions' enforceability against individuals as the precondition for the ownership transfer; some believed in formative role and another group only believed in the substantive role for the document registration (Shahri, 2006).

### **Document Conceptualized**

Article 1283 of the civil law states the following words for defining the documents in their specific sense: "document includes any piece of writing that can be substantiated or defended in the lawsuits". According to this definition, a proof featuring the following two conditions can be considered as document: 1) it has to be in written form and 2) it can be defended or substantiated in the lawsuits. Endorsement of the document should be added as a third prerequisite though some writings are not needed to be signed and the common law's implication of the final decision by the document and deed arranges takes the place of the specific sign of the signature (Dayyani, 2008). According to the law, document includes a writing usable by both the claimant and his or her opposite party, i.e. defendant, in courts (Emami, 2008).

### **Formal Deed from the Perspective of Civil Law**

Article 1287 of the civil law defines formal deed in the following words: "documents arranged in the public notary offices, the landed properties' registration offices or in the presence of any other formal officials within the limits of their jurisdiction according to the legal regulations are formal".

It is understood from the above definition that the legislator has considered three essential conditions for formal documents:

- 1) Arrangement of documents by the formal agents and officials;
- 2) The official's possession of the required qualifications and jurisdiction for deed arrangement
- 3) Observance of the regulations related to document arrangement

Considering the definition presented above for the formal documents and deeds, it becomes clear that the civil law realizes three types of deed as formal:

- 1) Documents registered in the landed properties' registration offices.
- 2) Documents registered in the notary public offices.
- 3) Documents arranged by the other formal officials like an ID card that has been issued by the agents of the civil and personal status registration offices according to the regulations.

### **Formal Documents from the Perspective of Registration Law**

From the perspective of the registration law, formal document is specifically the one specified in article 1287 of the civil law with the difference being that every document considered as formal from the perspective of the registration law is also formal from the viewpoint of the civil law, as well. However, a document might be considered formal from the perspective of the civil law but it might not be formal from the viewpoint of the registration law such as ID card. Thus, besides the differences in the definitions, the outcomes of the formal documents are also different from the perspective of the registration law and civil law, as well, meaning that the document considered as formal by the registration law can be enforced without a court's writ; the faults and mistakes in the arrangement of such documents can be posited in a case-specific manner in the supervision assembly and/or the supreme council of the registration offices. This is while the faults and mistakes of the formal documents included by the civil law's definition such as ID card or driver's license and/or other documents that are arranged by the governmental agents cannot be posited in the supervision assembly and/or the supreme council of the registration offices hence lacking the enforceability. This that the formal deeds are documents arranged and registered from the perspective of the registration law according to the regulations in the formal public notary offices can be inferred from the following articles:

- 1) Article 70 of the registration law stipulates that "a deed is formal when it is registered according to the regulations"; it is evident that the registration in the public notary offices is intended by registration.

- 2) Article 2 of the marriage law, passed in 1931, stipulates that the “marriage and divorce deeds are formal if they are registered according to the rulings of ministry of justice; otherwise they are ordinary documents”.
- 3) Paragraph 7 of article 25 of the registration law stipulates that “when problems or mistakes arise in the arrangement of the documents or adjusting their contents to the regulations, resolving of the problems and removal of the mistakes and issuance of the required instructions are up to the aforementioned supervision committee”. There is no doubt that formal deeds with such a meaning as documents arranged in the public notary offices are intended in this paragraph by the term “document” because the other documents’ mistakes and faults cannot be presented to the supervision committee.

### **Conceptualization of Deed in the Statutory Provisions (Interpretation of Article 48 of the Law on Landed Properties and Documents Registration)**

#### **Comparison of the Ordinary and Formal Deeds in Terms of Justification**

According to articles 1284, 1285 and 1286 of the civil law, every writing usable for proving a claim or substantiating a defense (except for affidavit) is titled document that can be formally or ordinarily arranged and if an ordinary document is presented against a person and the presenter succeeds in justifying the originality of its attribution to him or her in terms of signature and seal, such a document is authenticated as a formal document and becomes credible in respect to the lawsuit parties and their inheritors and deputies (article 1291 of the civil law). It can be concluded through contemplation over the statutory provisions that the ordinary and formal documents differ in terms of their justificatory power and that the ordinary writings with ensured originality and attributability to a person do not differ in terms of justification in respect to the lawsuit parties (Fat-hi, 2012).

#### **Position of Ordinary Documents in Lawsuits**

As it was mentioned in the discussion on the ordinary and formal documents, there is no difference between the ordinary and formal documents in the course of trial and judicial inference and discovery of the reality and recognition of the right from the wrong and the ordinary documents with sure originality and attributability do not differ from the judicial documents; it is only at the time of requesting for the supply of a want and in case of the verification of the necessity for the supply of such a want in judicial terms that the formal document wherein the debt or the commitment of a party has been definitely mentioned can be accepted by courts without the demand for the compensation of the contingent expenses and/or justification of the demand’s exposure to wastage and excess. The essential difference between the formal and ordinary documents lies in their dates with the date the former being credible even against the third persons. This is while the date of the ordinary documents’ expiration is limited to the signing parties and their inheritors and/or individuals in whose favor a testament has been made (Article 1305 of the civil law) (Safa’ei, 2003).

#### **Credibility of Confession and Its Relationship with Document**

Using scrutiny in articles 1280, 1281 and 1284 of the civil law enables the following deductions and inferences:

- A) Since confession includes verbal assertion to a right in favor of another person according to the definition inserted in article 1259 of the civil law and the legislator has not made any difference between the oral and written confessions and considers both of them as being equally credible (article 1280 of the civil law), the contents of a writing (including formal and ordinary) the issuing source of which is clear and bears news of another person’s right and is capable of being titled a document according to the legal definitions (article 1284 of the civil law) can be actually considered as constituting a formal or an ordinary document; the contents of such a document either partially or wholly imply a confession in favor of a third person. Therefore, a written confession is equal in legal conceptualizations to the very document that can be formal or ordinary.
- B) A person’s confession is credible provided that the incorrectness of the confession and its wrongness or faultiness is not proved and the confessor should be mature, sane, willful and

voluntary (articles 1262 and 1277 of the civil law). Furthermore, confession by insane persons is not effective in financial affairs as explicitly mentioned in article 1263 of the civil law in the same way that the bankrupts' confession about their properties to the disbenefit of the creditors lacks the legal influence (article 1264 of civil law).

- C) In terms of the justification, the (oral or written) confessions should be ensured and definite and suspended confessions are devoid of any effect (article 1286 of civil law). Thus, the documents, including ordinary and formal, follow the verdict of this same article in relation to the commitments inserted in them hence the suspended commitments like suspended surety (article 699 of civil law) are invalid and devoid of effect like the suspended confession though the fulfillment time of a commitment can be suspended with the actualization of the principle of commitment (last part of article 699 of civil law) (Khodabakhshi).

## **Credibility Limits of the Registered Formal Documents in the Statutory Provisions and Judicial Procedure**

### **Credibility of the Formal Documents' Contents**

The contents of a document incorporate the expressions, signatures and fingerprints as well as the seals inserted and written therein; by the credibility of the content, the accuracy of the attribution of the signatures and fingerprints existent in the document to certain individuals is intended. Thus, if a person substantiate his or her proofs of a claim against another person on the formal documents' contents in a court, the other party cannot doubt or refute the attribution of the expressions and statements inserted in the document as well as the signatures of certain persons therein whether the foresaid individuals be the formal agents or the contracting parties. So, when a person claims that s/he has not issued the signature and/or a person rejects the attribution of a sentence to him or herself or claims that s/he has signed the document without first reading it, they are disregarded in the court unless a claim is made indicating its fakeness followed by the justification thereof. In this case, article 70 of the registration law stipulates that "the document registered in accordance with the regulations is formal and all its contents and inserted signatures are credible unless the document's fakeness is proved".

### **Credibility of the Formal Documents' Contents**

By documents' contents, the articles and expressions inserted in the document are intended. In other words, the documents' contents are envisioned as intellectual matters quite opposite to the other type of material contents. Thus, by the credibility of the documents' contents, we mean that a person cannot deny the reality and its actualization following the acceptance of the expressions inserted by him or herself in the document through, for example, claiming that his or her confession has been unreal and/or the date s/he has inserted in the document is not its real date.

### **Formal Documents' Indispensability**

One of the other outcomes of the document registration is that its content is indispensable without any need for a court's writ and all of the justice department's agents and officers and all the other governmental branches are obliged to enforce the documents' contents when they are referred to by the law enforcing authorities and claiming the document's fakeness by a party cannot even bar the enforcement of its content unless a prosecutor issues a writ indicating the culprit's conviction of forgery and it is agreed by the attorney general.

Article 92 of the registration law stipulates that "the significations of all the formal documents about the debts and other movable properties are indispensably enforceable without any need for a verdict from the courts unless a document is related to the submission of a whole movable property possessed or claimed to be owned by a third person".

Article 93 of the same law stipulates that "all the formal documents about the transaction of the independently registered properties are enforceable without referring to the courts".

Article 95 of the registration law explicitly states that all the law enforcers and the other governmental officials are obliged to enforce the writ of execution when the law enforcing authorities refer to them for doing so.

Article 99 of the aforesaid law stipulates that “claiming the formal documents’ fakeness cannot put an end to its enforcement unless the prosecutor issues a writ indicating the culprit’s conviction and the attorney general agrees thereto”.

**Not Being Included by Passage of Time and Possibility of Issuing Writ of Execution at Any Time:**

One of the most important advantages and outcomes of the registered and indispensably enforceable formal documents is that the interested parties can enforce their contents at any time they want but, of course, following the arrival of the due date (in case of the specification of a promise and a period) and the debtor or the obligor cannot deny the payment by claiming the passage of time and s/he cannot also file a lawsuit to a court and demand the invalidation of the writ of execution for such an excuse as the passage of time. That is because the right for an execution writ’s issuance has not been limited to a given time and the person with such a right cannot be divested thereof without substantiation on the legal texts. The courts, as well, cannot grant the claims of time lapse by the defendants because time lapse has been introduced as being against the canonical rules in legal affairs by the jurisprudents of the Guardians Council as stated in notion no.7258 that was issue on 16<sup>th</sup> of February, 1983, and it is simultaneously an objection that can be made according to article 197 of the civil procedure for legal affairs only by the defendants and the individuals filing a lawsuit and requesting the invalidation of the writ of execution based on time lapse are called defendants and there is no permit for accepting this time lapse objection from the defendants.

### **Limits of the Ordinary Documents’ Credibility in the Statutory Provisions and Judicial Procedures**

The ordinary documents gain the credibility and authenticity of the formal documents in two states and they are enforceable accordingly about the parties, their inheritors and their deputies (based on article 1291 of the civil law); however, the dates of such documents can never have the credibility of those of the formal documents and they cannot be substantiable against the third persons (Katouziyan, 2012):

- A) If a party against whom the ordinary document has been presented confirms its issuance by the person to whom it is attributed.
- B) When it is proved in a court that the ordinary document has been previously signed and sealed by the party who is asserting its doubtfulness or rejecting its validity.

If an ordinary document be the proof of a plaintiff’s claim, the defendant can deny it because it is essentially the duty of the person substantiating on such documents to prove the originality of them and the opposite party can simply deny such documents and they are subsequently exempted from justifying the originality of the ordinary documents. As for the documents, distinction should be made between two aspects of them, namely the authenticity and justification: in regard of a document’s authenticity, the document’s nature and the conditions of its credibility are discussed and this subject is investigated from the civil law’s perspective as a substantive law (according to article 975 of the civil law). The document’s originality is signaled by its signature and documents are valueless without signature and they are just viewed as private notes and circumstantial evidence that can be usually used for completing and corroborating the other proofs. However, the written or the common laws may consider an intervention as an endorsement in some exceptional cases and consider an unsigned writing as a document. For instance, according to article 1281 of the civil law, insertion of debt in the business ledgers is equivalent to a written confession meaning that the tradesmen’s ledgers and journals are documentary under any circumstances against them (Mo’meni, 2015).

### **Conclusion**

Since the registration laws are qualified for formative aspects and their regulations should not at all be applied as having the nature of contracts and agreements and transactions thereby to accordingly investigate their concepts, assistance should be sought from the collection of the substantive regulations of civil law for interpreting and inferring from article 48 of the registration law as mentioned above so as to be able to deduce just and defendable results concerning the legal relations of the society members. The ordinary

documents gain the credibility of the formal documents in two states and they are authentic about the parties and inheritors and their deputies (according to article 1291 of the civil law); however, the dates of such documents can never have the validity of the formal documents and they are not substantiable against the third persons: if a person against whom an ordinary document has been presented confirms its issuance by the person to whom it is attributed and when it is proved in a court that the ordinary document has been previously signed and sealed by the party who is asserting its doubtfulness or rejecting its validity.

## **References**

- [1] Dayyani, Abd Al-Rasul, (no date), “proofs of claim justification in civil and criminal affairs”, 3<sup>rd</sup> ed., anonymous, Tadrīs
- [2] Katouziyan, Naser, (2005), “a two-volume course on justification and its proofs”, v.1, 3<sup>rd</sup> ed., Tehran, Mizan, no.170
- [3] Emami, Sayed Hasan, (2008), “a six-volume course on civil law”, v.6, 12<sup>th</sup> ed., anonymous, Eslamiyyeh
- [4] Fat-hi, Ali, (2012), “conceptualization of document in statutory provisions”, weblog of Ali Fat-hi, first degree justice department’s lawyer at [alifathilawyer.persianblog.ir/post/476](http://alifathilawyer.persianblog.ir/post/476)
- [5] Mo’meni, Sayed Mustafa, “business law in the modern order”, anonymous, Majd
- [6] Shahri, Gholam Reza, (2006), “laws of the landed properties and documents’ registration”, 17<sup>th</sup> ed., Tehran, Academic Jihad
- [7] Safa’ei, Sayed Hussein, (2003), “a preliminary course on the civil law: general regulations of contracts”, v.2, 1<sup>st</sup> ed., spring, Tehran, Mizan
- [8] Khodabakhshi, Abdullah, (no date), “legal analysis of the ownership justification claims”, journal of law researches, no.16